89-378

NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM, 1989

STATE OF ALABAMA, ex rel. DON SIEGELMAN,
ATTORNEY GENERAL, AND DON SIEGELMAN,
INDIVIDUALLY, AS A
CITIZEN OF THE STATE OF ALABAMA,
PETITIONERS,

V.

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, AND LEE M. THOMAS,
ADMINISTRATOR OF THE ENVIRONMENTAL
PROTECTION AGENCY, AND CHEMICAL WASTE
MANAGEMENT, INC., AND STATE OF TEXAS,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

DON SIEGELMAN
ATTORNEY GENERAL
OF ALABAMA

ROBERT D. SEGALL
SPECIAL ASSISTANT
ATTORNEY GENERAL OF
ALABAMA

COUNSEL OF RECORD

OFFICE OF THE
ATTORNEY GENERAL
THE ALABAMA STATE
HOUSE
11 SOUTH UNION ST.
MONTGOMERY, AL 36130
(205) 261-7300

51 pp

QUESTIONS PRESENTED

I. Where the EPA denied to citizens of Alabama their Fifth Amendment guarantees of notice and an opportunity to participate in agency decision-making processes which adversely affect the citizens' economic and environmental resources, did the Eleventh Circuit Court of Appeals err in ruling that those citizens lacked standing to challenge the infringement of their constitutional rights?

II. Does the Eleventh Circuit Court of Appeals' interpretation of 42 U.S.C. 9613(h), which denies citizens who are not potentially responsible parties under CERCLA a forum within which to litigate legitimate statutory and constitutional claims, comport with the underlying purpose of the Act and the U.S. Constitution?

III. Did the Eleventh Circuit Court of Appeals err by dismissing as moot the issue relating to the requirement to post bond in this action?

Parties

The Caption contains the names of all parties to the proceedings in the court below except the following individuals:
Guy Hunt (Governor of the State of Alabama) and Leigh Pegues (Director of the Alabama Department of Environmental Management).

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OPINIONS BELOW[1]

1. The opinion of the United States District Court for the Middle District of Alabama, Northern Division, entering a Temporary Restraining Order in favor of the plaintiffs is reproduced as Appendix A to this petition.

2. The opinion of the United States District Court for the Middle District of Alabama, Northern Division, granting plaintiffs a preliminary injunction, is reproduced as Appendix B to this petition.

3. The opinion of the United States District Court for the Middle District of Alabama, Northern Division, granting plaintiffs partial summary judgment, is

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[1]The appendices to this petition are separately bound pursuant to Rule 21.1(k).

reproduced as Appendix C to this petition.

4. The opinion of the Eleventh Circuit Court of Appeals reversing the decisions of the United States District Court for the Middle District of Alabama, Northern Division, is reproduced as Appendix D to this petition.

JURISDICTION

The judgment of the Eleventh Circuit Court of Appeals which is sought to be reviewed was rendered on April 18, 1989. The Appellate Court's order denying appellees/cross-appellants' timely petition for rehearing was denied on June 7, 1989. This Court has jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution,

Amendment V (in pertinent part)

"...; nor shall [any person] be deprived of life, liberty, or property without due process of law;...."

STATEMENT OF THE CASE

A. Statement of the Facts

In 1983 the Texas Water Commission requested the Environmental Protection Agency (EPA) to include on its National Priorities List for cleanup, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq. (CERCLA), an abandoned petrochemical facility located near South Houston, Texas. The facility, known as the Geneva Industries site, was formerly a

refinery plant which, from 1967 through 1978, manufactured a variety of fuel oils and organic compounds, including biphenyls and polychlorinated biphenyls (PCBs). After a preliminary investigation, which revealed extensive PCB-contamination of on-site soils, the EPA placed the Geneva Industries site on its National Priorities List and thereafter commenced a Remedial Investigation and Feasibility Study (RI/FS) in order to evaluate the site and determine the appropriate remedial action. The remedial alternatives ultimately proposed by the EPA in its April 1986 RI/FS included on-site incineration, off-site incineration, and off-site landfill disposal of the PCB-contaminated soils.

On September 18, 1986, the EPA, Region VI, issued its Record of Decision (ROD) for the Geneva Industries site. The remedial action selected and memorialized by the EPA in its ROD was excavation and off-site landfill disposal of the contaminated soils rather than incineration. The EPA's decision to select excavation and off-site landfill disposal as the appropriate remedial action was based, in part, upon public opposition by local citizens to on-site incineration.

Although no off-site facility was identified in the ROD as the destination for the PCB-contaminated soils, the Texas Water Commission entered into a contract with Chemical Waste Management, Inc. (Chem Waste) on April 18, 1988, for the excavation and

transportation of the contaminated soils from the Geneva Industries site to the Chem Waste facility at Emelle, Alabama, for off-site landfill disposal.

At no time prior to or after the issuance of the ROD was the State of Alabama or any of its citizens, agents, or agencies including the Governor, Director of the Alabama Department of Environmental Management, or Attorney General contacted or consulted with regard to the off-site landfill disposal of PCB-contaminated soils from the Geneva Industries site.

Alabama officials first learned of the impending plan to excavate and transport the estimated 47,000 tons of PCB-contaminated soils from the Geneva Industries site to Emelle, Alabama, through media inquiries in June, 1988.

The State of Alabama subsequently petitioned the EPA to re-open its ROD in order to provide the State of Alabama and its citizens with notice and an opportunity to participate in the selection of a remedial action which would be appropriate for the Geneva Industries site and conducive to the health and safety of all parties involved. The EPA ultimately refused the State of Alabama's request that it reopen the ROD for the Geneva Industries site.

B. Proceedings Below

On September 28, 1988, the State of Alabama, ex rel. Don Siegelman, Attorney General, and three individual citizens of the State of Alabama, Guy Hunt (Governor of the State of Alabama),

Leigh Pegues (Director of the Alabama Department of Environmental Management), and Don Siegelman, filed a complaint against the United States Environmental Protection Agency and its Administrator in an effort to enjoin shipment of the PCB-contaminated soils from the Geneva Industries site to Emelle, Alabama. The lawsuit was instituted due to EPA's refusal to reopen the Geneva Industries site ROD and in order to secure to the individual plaintiffs therein their fifth amendment guarantees of notice and an opportunity to be heard under the Constitution of the United States. Federal jurisdiction was invoked pursuant to the provisions of the Fifth Amendment of the United States Constitution, 28 U.S.C. §§1331 (1980),

1332 (1988), 2201 (1948), 2202 (1988), 5 U.S.C. §§701-706 (1966), 42 U.S.C. §§9613 (1980) and 9659 (1986) of CERCLA as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), and the general equity jurisdiction of the Federal District Court. Subsequent to the filing of this lawsuit, the State of Texas and Chem Waste entered this action as intervenor-defendants.

On October 31, 1988, the United States District Court for the Middle District of Alabama, Northern Division, entered a preliminary injunction in favor of the plaintiffs which enjoined the EPA from

> "authorizing or engaging in (1) implementing the Geneva site Record of Decision [ROD] and taking any remedial action thereto; (2) funding by federal government monies, either through the use of Superfund or otherwise, such

remedial action; and (3) approving or otherwise facilitating the transportation of the Geneva Site contaminated soil from the State of Texas to the State of Alabama." (See Appendix B, p. 22a-23a).

In connection with the preliminary injunction, the District Court required the plaintiffs to post security in favor of the intervenor-defendants, neither of which were enjoined, in the amount of $564,970. The defendants and intervenor-defendants appealed the issuance of the preliminary injunction to the Eleventh Circuit Court of Appeals while the plaintiffs cross-appealed the District Court's requirement that the plaintiffs post bond.

During the pendency of these appeals, the United States District Court granted to plaintiffs partial

summary judgment, enjoining the implementation of EPA's remedial action for the Geneva Industries site until the EPA provided to plaintiffs an opportunity to comment on the remedial plan selected. The Eleventh Circuit Court of Appeals consolidated the appeals from the preliminary injunction with the appeals from the partial summary judgment.

On April 18, 1989, the Eleventh Circuit Court of Appeals reversed the District Court's grant of preliminary injunction and partial summary judgment, dissolving the preliminary injunction, and dismissing the case for lack of subject matter jurisdiction. The Court of Appeals also dismissed as moot the plaintiffs' challenge to the bond requirement which was imposed by

the District Court in connection with its grant of preliminary injunction.

On June 7, 1989, the Eleventh Circuit Court of Appeals denied appellees/cross-appellants' petition for rehearing and, in addition, issued its mandate. On July 10, 1989, the petitioners herein requested the Eleventh Circuit to recall the mandate pending petitioners' application to the United States Supreme Court for Writ of Certiorari. On July 25, 1989, the Eleventh Circuit denied petitioners' motion to recall the mandate.

INTRODUCTION

EPA's refusal to provide the State of Alabama and its citizens notice and an opportunity to participate in the decision-making process involving the selection of a remedy for the Geneva

Industries site forms the basis of petitioners' statutory and constitutional claims in this action. The petitioners advanced their due process claims in order to redress the harsh inequities inherent in EPA's refusal to involve, within its own administrative processes, the State of Alabama and its citizens -- the very parties who will ultimately bear the impact of EPA's action. The only remedy sought by the petitioners herein is a reopening of the ROD in order that they may be afforded an equal opportunity to submit additional evidence and differing viewpoints favoring the implementation of a permanent remedy appropriate for the treatment and disposal of the contaminated soils at the Geneva

Industries site. The petitioners seek nothing more than the same opportunity that was provided to the State of Texas and those citizens of the South Houston community who live in proximity to the Geneva Industries site.

Unless the petitioners prevail, it is clear that EPA will continue to engage in the illegal practice of excluding states and citizens targeted for the receipt of CERCLA wastes from participation in EPA's Superfund decision-making process. If allowed to persist, this scenario will discourage other states from developing hazardous waste landfill capacity within their own borders as required by CERCLA, 42 U.S.C. §9604 (1980) and will, unfortunately, rapidly encourage within these states the development of the

"NIMBY" (not in my back yard) syndrome.

As of the filing of this petition, the PCB-contaminated soils continue to move from the State of Texas into the State of Alabama. It is, therefore, imperative that this Court grant Certiorari, not only to redress the injuries sustained by the petitioners therefrom, but also to prevent recurrent violations of petitioners' constitutional and statutory rights.

REASONS FOR GRANTING THE WRIT

I.

This Court Should Grant Certiorari and Overturn the Ruling By the Eleventh Circuit Court of Appeals That Citizens of Alabama Lacked Standing to Challenge the Infringement of Their Constitutional Rights Where the EPA denied to Those Citizens Their Fifth Amendment Guarantees of Notice and an Opportunity to Participate in EPA Decision-Making Processes Which Adversely Affect those Citizens' Economic and Environmental Resources.[2]

It is the petitioner's position that the Eleventh Circuit Court of Appeals erred by denying to the individual plaintiffs the standing necessary to challenge EPA's failure to involve them in the development of

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[2]The constitutional claims herein are advanced on behalf of the individual petitioner, Don Siegelman.

EPA's ROD for the Geneva Industries site. In its opinion, the Court of Appeals incorrectly found that the individual plaintiffs to this action lacked standing based upon their status as taxpayers, State of Ala. v. U.S. E.P.A., Nos. 88-7677, 89-7024 at 2321-2322, (11th Cir. April 18, 1989), and that, as a consequence, plaintiffs failed to satisfy the minimum constitutional requirement of injury in fact necessary to meet the case and controversy mandate of Article III of the United States Constitution.

The Court of Appeals, however, misapprehended the nature of the constitutional claims advanced on behalf of the individual plaintiffs. As was previously emphasized in the appellees/cross appellants' brief to

the Court of Appeals, "This is not a taxpayers' suit." (Brief of Appellees/ Cross Appellants, pg. 19). The petitioner has, throughout the course of this action, never challenged the constitutionality of the expenditures of federal tax revenues under CERCLA. The petitioner has, however, affirmatively challenged EPA's use of such funds to implement a governmental action which deprives him of his property and liberty without due process of law.

The petitioner simply asserts that he and the other individual plaintiffs to this action possess a clearly definable and quantifiable property interest in the use and enjoyment of their state resources and further, that the actions undertaken by the defendants

have, without due process of law, deprived the petitioner of his utilization, enjoyment, and conservation of these resources. The affidavits of Margaret Corey, former Compliance Chief of the Alabama Department of Environmental Management's Hazardous Waste Branch, (Doc. Rec. No. 9) and Lieutenant Thomas E. Mesaris, Assistant Unit Commander of Alabama's Motor Carrier Safety Unit, (Doc. Rec. No. 10) irrefutably establish that the shipment of PCB-contaminated soils from Texas into Alabama will not only require significant expenditures of state revenues and commitments of state resources, but will also adversely impact the safety, integrity, and conditions of Alabama's highways due to the increased likelihood of accidents

and additional demands placed upon the state's highway personnel. In addition, the action challenged herein would not only deprive the petitioner of landfill capacity within his own state, but will also divert the time and energy of the Alabama Department of Environmental Management to investigate, monitor, and regulate these wastes for years to come.

The petitioner's stake in the outcome of this action is based squarely upon the adverse economic and environmental effects that he has sustained and endured as a consequence of the EPA's actions at the Geneva Industries site. In United States v. SCRAP, 412 U.S. 669 (1973), this honorable Court declared that "standing (is) not confined to those who could

show economic harm . . . . Aesthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life . . . ." 412 U.S. at 686, citing Sierra Club v. Morton, 405 U.S. 727, 734 (1972). In SCRAP, this Court also held that standing should not be denied merely because many people suffer the same injury, stating:

> "The Government urges us to limit standing to those who have been 'significantly' affected by agency action. But, even if we could begin to define what such a test would mean, we think it fundamentally misconceived. 'Injury in fact' reflects the statutory requirement that a person be 'adversely affected' or 'aggrieved', and it serves to distinguish a person with a direct stake in the outcome of a litigation--even though small--from a person with a mere interest in the problem. We have allowed important interests to be vindicated by plaintiffs with no more at stake in the outcome of an action than a fraction of vote, see

> Baker v. Carr, 369 U.S. 186; a five dollar fine and costs, see McGowan v. Maryland, 366 U.S. 420; and a $1.50 poll tax, Harper v. Virginia Bd. of Elections, 383 U.S. 663 . . . . As Professor Davis has put it: 'The basic idea that comes out in numerous cases is that an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation.' Davis, Standing: Taxpayers and Others, 35 U.Chi. L.Rev. 601, 613. See also K. Davis, Administrative Law Treatise, §§22.09-5, 22.09-6 (Supp. 1970).

412 U.S. at 689-690 n.14 (emphasis added).

Based upon the above-referenced affidavits, it is clear that the injuries complained of by the petitioner are neither "trifling" nor generalized grievances but are, to the contrary, quite specific, tangible, and qualitatively sufficient to confer standing upon him in this cause. See Saladin v. City of Milledgeville, 812

F.2d 687 (11th Cir. 1987); American Civil Liberties Union of Ga. v. Rabun County Chamber of Commerce, 698 F.2d 1098 (11th Cir. 1983). Given the nature of these interests and the injuries sustained thereto, it is only fair that the petitioner be afforded, at the very least, notice and an opportunity to participate in the government's selection of a remedy for the Geneva Industries site.

Furthermore, it is the petitioner's position that the Court of Appeals committed reversible error inasmuch as it based its decision upon the presumption that the plaintiffs would be unable to prevail even if granted their procedural rights to due process of law. In its opinion, the Court of Appeals stated that:

> "In this case, there is no necessary causal connection between the injury to Alabama's environment and the lack of notice and opportunity to participate in the selection of the remedial action for the Geneva Industries site. Plaintiffs do not challenge the shipment of wastes from Texas to Alabama directly. . . . Rather, plaintiffs seek only a hearing in which to express their views about the appropriate remedial action for this site. The threat to Alabama's environment, however, results solely from the actual shipment and receipt of the wastes. Plaintiffs' injury thus does not result from their lack of participation in the development of the Record of Decision. Plaintiffs' injury also is not likely to be redressed by a reopening of the Record of Decision."

State of Ala. v. EPA, Nos. 88-7677, 89-7024, at 2323 (11th Cir. April 11, 1989) (emphasis added).

First of all, the Court of Appeals is simply incorrect in its analysis of the causality relationship between the petitioner's injury and his lack of notice and inability to participate in

the ROD for the Geneva Industries site. Contrary to the Court's opinion, the shipments of contaminated soils from Texas to Alabama is directly attributable to the Agency's failure to involve the State of Alabama and its citizens in EPA's decision-making process. If the petitioner had been properly afforded the opportunity to submit to EPA comments and additional evidence favoring the implementation of alternative remedial actions for the Geneva Industries site, then the above-referenced shipments could have been averted, either through EPA administrative action or pursuant to judicial review under the Administrative Procedures Act.

Secondly, it was fundamentally unfair and entirely inappropriate for

the Court of Appeals to deny standing to the plaintiffs on the basis of the alleged likelihood that their injuries would not be redressed upon a reopening of the ROD. The Court's reasoning, in effect, conveys to the petitioner the following tautology: "Even if you have the right to be heard and we listen to you, EPA won't listen to you; therefore, we won't listen to you." The petitioner should not be compelled, as a prerequisite to the vindication of his constitutional rights, to demonstrate that he will ultimately prevail at the hearing sought. The Court's ruling in this regard is akin to a prospective determination of harmless error, wherein it assumes EPA's delegated duty of evaluating the petitioners' evidence and comments

concerning the appropriate remedial action for the Geneva Industries site. Unfortunately, the Court of Appeals, in this instance, made EPA's determination without the benefit of the petitioners' evidence or their views. The Court of Appeals thus exceeded the bounds of judicial restraint and improperly usurped, to the detriment of petitioner's due process guarantees, the administrative functions of EPA. Accordingly, the petitioner respectfully contends that the opinion rendered below is due to be reversed.

II.

This Court Should Grant Certiorari and Overturn the Court of Appeals' Erroneous Interpretation of 42 U.S.C. 9613(h) (1980) Which Denies Citizens Who Are Not Potentially Responsible Parties Under CERCLA a Forum Within Which to Litigate Legitimate Statutory and Constitutional Claims.[3]

It is the petitioners' position that the Court of Appeals incorrectly applied 42 U.S.C. §9613(h)(4) (1980) to this action and thereby deprived the petitioners of their only meaningful opportunity for judicial review. The Court of Appeals based its decision to decline jurisdiction on what it perceived to be the "plain language" of 42 U.S.C. §9613(h)(4), to wit:

> "No Federal court shall have jurisdiction under Federal law other than under section 1332 of

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[3]The statutory claims herein are advanced on behalf of the individual petitioner, Don Siegelman, and the State of Alabama.

> Title 28 (relating to diversity of citizenship jurisdiction) or under State law which is applicable or relevant and appropriate under section 9621 of this title (relating to cleanup standards) to review any challenges to removal or remedial action selected under section 9604 of this title, or to review any order issued under section 9606(a) of this title, in any action except one of the following:
> (4) An action under section 9659 of this title (relating to citizens suits) alleging that the removal or remedial action taken under section 9604 of this title or secured under section 9606 of this title was in violation of any requirement of this chapter. Such an action may not be brought with regard to a removal where a remedial action is to be undertaken at the site."

The Court of Appeals construed §9613(h)(4) to preclude judicial review of the remedial action challenged until after the remedial action has been completed. The petitioners' cause of action is not, however, a challenge to the remedial action selected by EPA; it is simply a meritorious effort to

restore to the petitioners their statutory and constitutional rights to notice and an opportunity to be heard. The Court of Appeals should not, therefore, have applied §9613(h)(4) to bar judicial review of the petitioners' statutory and due process claims.

Given the underlying purpose of 42 U.S.C. §9613(h), the Appellate Court should, nevertheless, have exercised its jurisdiction over this action. Based upon the interpretation given §9613(h) by numerous courts, it is clear that this section was enacted in order to prevent delays in the cleanup of Superfund sites through protracted litigation by potentially responsible

parties (PRPs).[4] This section, however, was certainly not intended to preclude judicial review of legitimate statutory and constitutional claims alleging irreparable harm. While PRP's will ultimately have an opportunity to redress their grievances and complaints once EPA files a cost recovery action under 42 U.S.C. §9607 (1980), see Dickerson v. Administrator, E.P.A., 834 F.2d 974 (11th Cir. 1987), the petitioners in this action will have no such opportunity. Inasmuch as EPA will bring no monetary claims or subsequent

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[4]See Dickerson v. Administrator, EPA, 834 F.2d 974 (11th Cir. 1987); Wagner Seed Co. v. Daggett, 800 F.2d 310 (2nd Cir. 1986); J.V. Peters & Co. v. EPA, 767 F.2d 263 (6th Cir. 1985); Cabot Corp. v. Environmental Protection Agency, 677 F. Supp. 823 (E.D. Pa. 1988).

enforcement action against the petitioners, the instant case is the only vehicle through which the petitioners' injuries may be redressed.

In Cabot Corp. v. Environmental Protection Agency, 677 F. Supp. 823 (E.D. Pa. 1988), the District Court explained the appropriate scope of judicial review under §9613(h) as it pertains to the due process rights of PRPs and citizens alleging irreparable harm:

> "Due process rights of PRPs are protected by PRPs eventual opportunity to contest unnecessary costs that EPA attempts to recover from them. The expectation that it will have to defend against such claims by PRPs gives EPA an incentive to conduct cleanups in accordance with CERCLA and the NCP. 677 F.Supp. at 828-829 (emphasis added).
>
> "* * * *
>
> "Of course, such an opportunity provides due process only where the PRPs' suit alleges compensable rather than irreparable injury.

> The compatibility with due process of deferring judicial review of claims of compensable harm, as distinguished from the need for prompt review of allegations of irreparable injury, such as harm to public health or the environment, supports the distinction here drawn between PRPs' suits alleging essentially monetary harms and bona fide citizens suits alleging irreparable harm."

677 F. Supp. at 829 n.6 (emphasis added).

In the instant case, "there exists no effective protection of [petitioner's] rights except for this lawsuit". See Chemical Waste Management, Inc. v. EPA, 673 F. Supp. 1043, 1055 (D. Kan. 1987). Accordingly, the Court of Appeals should not have read §9613(h) in such a way as to eliminate any opportunity for the petitioners to be heard. See Id. at 1055. If, to the contrary, §9613(h) can only be interpreted so as to deny

to the petitioners their right to be heard--in effect, to preclude judicial review of legitimate constitutional claims--then it is the petitioners position that said statute is unconstitutional on its face.

Accordingly, the petitioners respectfully request that this Honorable Court remand this cause to the Eleventh Circuit Court of Appeals with instructions that it exercise its jurisdiction over the matters set forth in petitioners' complaint.

III.

This Court Should Grant Certiorari And Overturn The Ruling By The Eleventh Circuit Court of Appeals To Dismiss as Moot The Issue Relating to the Requirement to Post Bond In This Action.

In its opinion, the Eleventh Circuit Court of Appeals incorrectly held that the appellants/cross appellees' challenge to the Dist ict Court's bond requirement was rendered moot pursuant to the Appellate Court's decision to dismiss plaintiffs' cause of action. The issue as to posting bond was submitted to the Eleventh Circuit for review following the District Court's erroneous decision to require the plaintiffs to post bond in favor of the intervenors, the State of Texas and Chem Waste, neither of which were enjoined. It is the petitioners'

contention, based upon the following authority, that the District Court erred by requiring the plaintiffs below to post security in favor of the non-enjoined intervenor defendants. See Powelton Civic Home Owners Ass'n v. Dep't of Housing & Urban Development, 284 F. Supp. 809 (E.D. Pa. 1968) (Redevelopment Authority not enjoined may not demand security); Commonwealth of Puerto Rico v. Price Commission, 342 F. Supp. 1311 (D. P.R. 1972) (non-enjoined intervening party not entitled to security).

The Court of Appeal's failure to address this matter obliges the petitioners to raise their arguments at this juncture in order to avoid a possible waiver of their objections at a future date. Accordingly, the

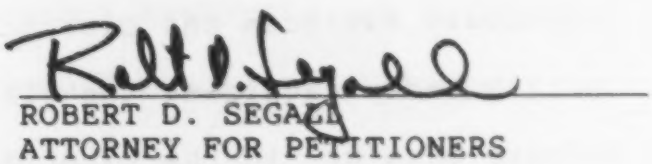
Petitioners maintain that the District Court exceeded its authority by requiring the plaintiffs to post security in favor of the non-enjoined intervenors and, in addition, that the Court of Appeals erred by failing to rule on this issue. The petitioners, therefore, respectfully request that this Court overturn the District Court's order requiring the plaintiffs to post bond or, in the alternative, that this Court remand this issue to the Eleventh Circuit Court of Appeals for adjudication.

CONCLUSION

For the reasons stated, this Court should grant certiorari to decide the important federal questions presented in this case.

Respectfully submitted,

DON SIEGELMAN
ATTORNEY GENERAL OF ALABAMA
BY-



ROBERT D. SEGALL
ATTORNEY FOR PETITIONERS

ADDRESS OF COUNSEL:

Alabama State House
11 South Union Street
Montgomery, Alabama 36130
(205) 261-7300

CERTIFICATE OF SERVICE

I, Robert D. Segall, a member of the Bar of the Supreme Court of the United States, do hereby certify that this 30th day of August, 1989, I did serve a copy of this petition and a copy of the accompanying appendices upon counsel of record by placing the same in the United States Mail, first class postage prepaid, and properly addressed as follows:

Mr. David C. Shilton, Attorney
Land & Natural Resources Division
United States Department of Justice
Main Justice Building, Room 2339
P. O. Box 23795 (L'Enfant Station)
Tenth and Constitution Ave., N.W.
Washington, D.C. 20026

Mr. Jim Mattox
Attorney General for State of Texas
Mr. John R. Carter
Assistant Attorney General

Supreme Court Building
Environmental Protection Division
P. O. Box 12548
Austin, Texas 78711-2548

Mr. Fournier J. Gale, III
Mr. H. Thomas Wells, Jr.
Mr. Alfred S. Smith, Jr.
Maynard, Cooper, Frierson &
Gale, P.C.
Twelfth Floor Watts Building
Birmingham, Alabama 35203

Marshall Timberlake
John P. Scott, Jr.
Martha F. Petrey
Balch & Bingham
P. O. Box 306
700 Financial Center
505 North 20th Street
Birmingham, Alabama 35203

I further certify that I have served all parties required to be served.

Robert D. Segall
Attorney for Petitioners